

**REMARKS**

Upon entry of the above amendments, this application will contain claims 1, 3, 6, 7, 9, 12, 16, and 18 pending and under consideration. The application was originally filed with claims 1-15. In a Preliminary Amendment, claims 2 and 13-15 were canceled and new claims 16-17 were added. In a Response filed on 5 August 2007, claims 5, 11, and 17 were canceled and claim 18 was added. In this Submission, claims 4 and 10 have been canceled, no new claims have been added, and claims 1, 7, 9, 12, 16, and 18 have been amended. As discussed more fully below, it is believed that the pending claims are patentable. Reconsideration leading to allowance of all pending claims is requested.

**I. Rejections under 35 USC §112**

1. Claims 1, 3-6, 9, 10, 16 and 18 were rejected under 35 U.S.C. 112, first paragraph, for alleged failing to comply with the written description requirement. It was stated that no support for R1 representing allyl as recited in claims 1 and 3 was found in the application.

Support for R1 as allyl can be found in the application at Example 3, page 12, ¶ 167, which discloses 3-oxo-3H-benzo[d]isothiazole-2-carboxylic acid allylamide and in claim 7, line 2. (All references to the present application refer to published US patent application, US2006/0276522.)

2. Claims 10, 12, and 16 were rejected under 35 U.S.C. 112, first paragraph, for alleged failing to comply with the enablement requirement. In order to advance this application to allowance, claim 10 has been canceled. Claim 12 has been amended by replacing the phrase “elevated hepatic lipase activity” with –hypercholesterolemia, hyperlipidemia, or atherosclerosis–. Support for this claim can be found in the present application at ¶0076. Claim 16 has been amended to depend from claim 18.

In light of the above comments and claim amendments, withdrawal of all rejections of the claims under 35 USC §112, first paragraph is requested.

**II. Rejections under 35 USC 112, second paragraph**

1. Claim 7 was rejected was noted as confusing. Claim 7 has been amended by adding –A compound– in line 1 and replacing the “and:” in the last line with a period.

2. Claim 9 was rejected for a typographical error, i.e., lacking a space between claim

and 1. Claim 9 has now been corrected.

3. Claim 10 was rejected. Claim 10 has been canceled; therefore, this rejection is moot.

4. Claim 18 was rejected as unclear for failing to recite how and on what/whom the effective amount of compound is administered. Claim 18 has been amended to recite to a method of treating ... a mammal in need thereof administering an effective amount of benzisothiazole-3(2H)-one compound of formula I. Support for this amendment can be found in the application on page 6, ¶0076.

In light of the above, withdrawal of all rejections of the claims under 35 USC §112, second paragraph is requested.

### III. Rejections under 35 USC §103

Claims 1, 4, 6-9 and 12 were rejected under 35 U.S.C. 103(a) alleged as being unpatentable over Takahashi et al. (JP 48-029134 herein after Takahashi).

Claim 1 has been amended by canceling reference to the substituted benzyl and C<sub>2</sub>-C<sub>4</sub> alkylaryl variables for R1. Takahashi does not disclose or make obvious the presently claimed invention in which R1 is an (C<sub>4</sub>-C<sub>12</sub>)haloalkyl, -CF<sub>3</sub>, allyl, (C<sub>1</sub>-C<sub>8</sub>)alkylcycloalkyl, and (C<sub>3</sub>-C<sub>8</sub>)cycloalkyl. At best, Takahashi discloses compounds in which the R1 group is an alkyl group. (See Takahashi, structures 1, 2, and 6 in the table spanning pages 2 through 4. However, these structures and the teachings of Takahashi does not motive one skilled in the art to prepare the instantly claimed compounds. The instantly claimed compounds are not structurally similar to those of Takahashi.

Claim 4 has been canceled; therefore, this rejection is moot. Claims 6, 9, and 12 depend or indirectly from claim 1. Claim 7 has been amended to delete reference to compounds in which R1 is a substituted benzyl group or an alkylaryl group.

In light of the above comments and amendments withdrawal of the rejection of claims, 1, 6-9 and 12 is requested.

### IV. Claim Amendments

Claim 12 has also been amendment by incorporating the subject matter for the variables R1-R6 from claim 1. It is believed that this amendment does not add new matter. While it is acknowledged that such amendments are not entered as a matter of right after a final rejection,

however this amendment only adds subject matter already in the application and presumably searched/examined. Claim 12 previously depended from claim 1, and thus included all the variables for R1-R6. Consequently, claim 12, as amended, should not require any additional searching. Furthermore, claim 12, as amended, is patentable over the cited art. In particular, Takahashi teaches compounds for *non-medical* fungicides. (Takahashi, page 1, English trans., emphasis added.) Therefore, the invention claimed in claim 12 to a pharmaceutical formulation is both novel and non-obvious over Takahashi.

Entry of this amendment is respectfully requested.

V. Conclusion

In light of the above comments and claim amendments, withdrawal of all outstanding rejections is requested. Applicants respectfully request timely examination of this application leading to allowance of all pending claims. The Examiner is invited to contact the undersigned attorney by telephone if there are any questions about this Response or other issues that may be resolved in that fashion.

Respectfully submitted,

/James B. Myers/  
James B. Myers  
Attorney for Applicants  
Registration No. 42,021  
Phone: 317-276-0755

Eli Lilly and Company  
Patent Division  
P.O. Box 6288  
Indianapolis, Indiana 46206-6288  
16 January 2008

Rev. 6/05